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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,409	02/22/2002	Norman E. Cameron	P-0281576/Z7	2660

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[REDACTED] EXAMINER

WEDDINGTON, KEVIN E

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1614

DATE MAILED: 09/11/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/889,409	CAMERON ET AL.
	Examiner	Art Unit
	Kevin E. Weddington	1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 June 2003.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 22,24,25 and 42-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 22 and 42 is/are allowed.
- 6) Claim(s) 24,25 and 43-48 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>18</u> . | 6) <input type="checkbox"/> Other: _____                                     |

Claims 22, 24, 25 and 42-48 are presented for examination.

Applicants' response and amendment filed June 23, 2003 have been received and entered.

Accordingly, the rejection made under 35 USC 103 as set forth in the previous Office action at page 2-5 is hereby withdrawn.

*Allowable Subject Matter*

Claims 22 and 42 are allowable.

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 24, 25 and 43-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ikeda et al. (BR).

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Ikeda et al. teach pharmaceutical compositions comprising sensitivity enhancer in combination with other antidiabetic compounds such a statin compound for the treatment of diabetic complications. Note column I 7, lines 48-54 states the diabetic complications include diabetic neuropathy (same as applicants' instant invention). The cited reference teaches in its claims I-I3 the instant composition comprising an insulin sensitivity enhancer with a statin compound. Note the insulin sensitivity enhancer can be troglitazone, rosiglitazone and pioglitazone, the same as applicants' other drugs of claims 25 and 43.

The instant invention differs from the cited reference in that the cited reference does not teach the applicants' preferred statin compound or statin drug is combined with the other antidiabetic drugs. However, one skilled in the art would have motivated to substitute one statin compound for another statin compound and achieve the same results in the absence of evidence to the contrary.

The instant invention differs from the cited reference in that the cited reference does not teach the applicants' specific dosage range of the statin compound of claim 47. However, the determination of a dosage having optimum therapeutic index is well within the level of one having ordinary skill in the art, and the skilled artisan would have been motivated to determine optimum amounts to get the maximum effect of the statin compound.

Claims 24, 25 and 43-48 are not allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin E. Weddington whose telephone number is (703) 308-4650. The examiner can normally be reached on 11:00 am-7:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marrianne Seidel can be reached on (703)308-1235. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

K. Weddington  
September 10, 2003

*KE - Weddington*  
**Kevin E. Weddington**  
**Primary Examiner**  
**Art Unit 1614**